

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CP-00133-COA

CEDRIC CARTER

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	12/18/2018
TRIAL JUDGE:	HON. LEE SORRELS COLEMAN
COURT FROM WHICH APPEALED:	NOXUBEE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	CEDRIC CARTER (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: MATTHEW WYATT WALTON
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
DISPOSITION:	AFFIRMED - 04/14/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE BARNES, C.J., WESTBROOKS AND C. WILSON, JJ.

WESTBROOKS, J., FOR THE COURT:

¶1. Cedric Carter pled guilty to second-degree murder and was sentenced to serve forty years in the custody of the Mississippi Department of Corrections (MDOC). Appearing pro se, Carter now appeals from the circuit court's denial of his motion for post-conviction collateral relief (PCR). After reviewing the record, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2. On September 25, 2017, a Noxubee County grand jury indicted Carter for one count of first-degree murder (Count I) in violation of Mississippi Code Annotated section 97-3-19 (Supp. 2016) and one count of aggravated assault (Count II) in violation of Mississippi Code Annotated section 97-3-7 (Supp. 2016). Carter was accused of killing Kentrell Sherrod and

shooting Deangelo Martin.

¶3. On March 26, 2018, Carter submitted a “Petition to Enter a Guilty Plea” to the circuit court and pled guilty to Count I’s lesser-included offense of second-degree murder. The charge in Count II (for aggravated assault) was dismissed on the State’s motion. The court accepted Carter’s guilty plea. On March 29, 2018, the court sentenced him to serve forty years in the custody of the MDOC at the conclusion of a sentencing hearing.

¶4. On August 10, 2018, Carter filed a letter with the circuit court requesting reconsideration of his sentence, which the court denied in an order entered on August 15, 2018. Carter also filed a PCR motion with the circuit court challenging his indictment and guilty plea. After reviewing the record, the court entered an order denying Carter’s PCR motion on December 18, 2018, without holding an evidentiary hearing. The current appeal arises from that denial.

STANDARD OF REVIEW

¶5. “We review the dismissal or denial of a PCR motion for abuse of discretion.” *West v. State*, 226 So. 3d 1238, 1239 (¶3) (Miss. Ct. App. 2017) (quoting *Hughes v. State*, 106 So. 3d 836, 838 (¶4) (Miss. Ct. App. 2012)). “[W]hen reviewing a trial court’s denial or dismissal of a PCR motion, we will only disturb the trial court’s decision if it is clearly erroneous; however, we review the trial court’s legal conclusions under a de novo standard of review.” *Id.* (quoting *Adams v. State*, 201 So. 3d 521, 523 (¶4) (Miss. Ct. App. 2016)).

DISCUSSION

I. Whether there was a sufficient factual basis for the circuit court to accept Carter’s guilty plea.

¶6. Carter alleges that the circuit court accepted his guilty plea absent a factual basis and thereby violated his due process rights. Carter argues that because he did not personally provide the court with a detailed account of his crime during the plea hearing, the plea should be invalidated. However, the record does not support his contentions.

¶7. At his hearing, Carter engaged in a lengthy plea colloquy with the court and the State that included the following portion:

Court: In cause number 2017-0034C, Circuit Court of Noxubee County, Mississippi, the indictment in count number one for the lesser-included offense would charge as follows: That on or about the 11th day of December, 2016, in Noxubee County, Mississippi, *that you did unlawfully, willfully, and feloniously kill and murder Kentrell Sherrod*, a human being, without authority of law and not in necessary self-defense in violation of Mississippi Code Annotated section 97-3-19(1)(b), contrary to the form of the statutes in such cases made and provide and against the peace and dignity of the State of Mississippi. *Are you guilty of doing that?*

Carter: Yes, sir.

Court: The Court find that Mr. Carter is competent to understand the nature of the charges against him and that he understands the consequences of his plea of guilty as well as the maximum and minimum sentences required by law. What is the factual basis to sustain the lesser-included charge in count number one of the indictment?

State: In the event of a trial, the State would show through the testimony of Deangelo Martin, who is the nephew of Andrew Sherrod—Kentrell was his middle name—that on the date listed in the indictment, December, 11, 2016, I believe, that Mr. Sherrod had a club in Noxubee County, more like a bar but a club where people could come and dance and drink and watch sports or whatever. He had a birthday party for someone he was close friends with. He was also preparing to celebrate his birthday a week later. There were a lot of people at the club.

On that night, Mr. Carter had a confrontation with his wife that appeared to be escalating inside the bar. Deangelo Martin will testify that Andrew Sherrod asked Mr. Carter to step outside to avoid having the confrontation inside his bar. When he stepped outside, Deangelo Martin and several other witnesses will say that eventually, the argument between – that originated – was about the Defendant and his wife, somehow – because Mr. Sherrod did not want the conflict in his bar, ended up becoming between Mr. Sherrod and Mr. Carter. At some point, the confrontation escalated to the point where the Defendant pulled out a gun, shot Mr. Sherrod and also shot Mr. Martin, but for our purposes, Mr. Sherrod was the one that was shot. Later on, he died at the hospital that night.

Court: Court finds there is sufficient factual basis to sustain the charge – lesser-included charge of second degree murder in count number one of the indictment. Court further finds the plea of guilty is freely, voluntarily, knowingly, and intelligently entered. The Court will accept the plea of guilty. . . .

(Emphasis added).

¶8. This Court has addressed the varying ways to establish a sufficient factual basis for the purpose of accepting a defendant’s guilty plea:

A factual basis for a guilty plea has been found when third parties discuss the evidence against a defendant. For example, there may be a sufficient factual basis to support a defendant’s guilty plea when both a defendant and an investigator for the prosecution testify to factual matters during a guilty-plea hearing. Similarly, a prosecutor’s “concise statement of facts to establish the crime, the investigation, and the apprehension of” a defendant during a guilty-plea hearing has been found to aid in establishing a sufficient factual basis to support a guilty plea. *Reynolds v. State*, 521 So. 2d 914, 917 (Miss. 1988). A defense attorney’s “lengthy recitation of the evidence against” a defendant during a guilty plea may also establish a sufficient factual basis to support a guilty plea.

Palmer v. State, 140 So. 3d 448, 455 (¶18) (Miss. Ct. App. 2014) (other citations omitted).

¶9. Here, based on Carter’s own admission and the State’s presentation of the facts

surrounding the murder, we find that the circuit court had an ample factual basis to accept Carter's guilty plea. This claim is without merit.

II. Whether Carter's indictment was defective.

¶10. Carter raises various issues with his indictment, arguing that a multitude of alleged errors rendered it defective.

¶11. We first note that "[t]his Court does not consider moot questions." *Guyse v. State*, 282 So. 3d 1287, 1289 (¶5) (Miss. Ct. App. 2019) (citing *Bradley v. State*, 355 So. 2d 675, 676 (Miss. 1978)). "So long as the judgment on the merits would be of no practical benefit to the plaintiff or detriment to the defendant, the case is moot." *Id.* (citing *Beals v. State*, 139 So. 3d 776, 777 (¶7) (Miss. Ct. App. 2014)). The court's dismissal of Count II (aggravated assault) rendered any alleged indictment defects related to that charge moot. As a result, we will not address the merits of those claims.

¶12. Further, with the exception of "an indictment's failure to charge an essential element of the crime" and "lack of subject matter jurisdiction," Carter's guilty plea "waive[d] all other defects or insufficiencies in the indictment." *Alford v. State*, 185 So. 3d 429, 431 (¶6) (Miss. Ct. App. 2016) (quoting *Joiner v. State*, 61 So. 3d 156, 159 (¶7) (Miss. 2011)). Accordingly, we will only address the merits of Carter's excepted claims.

A. Malice Aforethought

¶13. Carter complains that Count I of his indictment failed to assert an essential element of murder because it did not include the phrase "malice aforethought." In Count I, the indictment charged that

. . . on or about the 11th day of December, 2016, in the County and State aforesaid, [Carter] did unlawfully, willfully, and feloniously, with the *deliberate design* to effect death, kill and murder Kentrell Sherrod, a human being, without authority of law and not in necessary self-defense, in violation of § 97-3-19 MCA (1972); contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the State of Mississippi.

(Emphasis added). “It has long been the case law of this state that malice aforethought, premeditated design, and deliberate design all mean the same thing.” *Tran v. State*, 681 So. 2d 514, 517 (Miss. 1996) (quoting *Windham v. State*, 602 So. 2d 798, 801 (Miss.1992) (quoting *Johnson v. State*, 475 So. 2d 1136, 1139 (Miss.1985))); *see also Dye v. State*, 127 Miss. 492, 90 So. 180, 181 (1922); *Hawthorne v. State*, 58 Miss. 778, 783-90 (1881); *McDaniel v. State*, 16 Miss. (8 S. & M.) 401, 414-20 (1847). “Definitionally, we regard ‘malice aforethought’ and ‘deliberate design’ as synonymous.” *Tran*, 681 So. 2d at 517 (quoting *Blanks v. State*, 542 So. 2d 222, 227 (Miss.1989)). Carter’s argument is meritless.

B. Manner of Death

¶14. Carter also complains that his indictment failed to state the manner by which he caused Sherrod’s death, and thus failed to list an essential element of the murder charge.

¶15. Mississippi Code Annotated section 99-7-37(1) (Rev. 2015) provides that

[i]n an indictment for homicide[,] it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it shall be sufficient to charge in an indictment for murder, that the defendant did feloniously, willfully, and of his malice aforethought, kill and murder the deceased. It shall be sufficient, in an indictment for manslaughter, to charge that the defendant did feloniously kill and slay the deceased, concluding in all cases as required by the Constitution of this state.

¶16. Consistent with the above statutory guidelines, this Court has held that no such

requirement exists; the cause of death is not an essential element of murder. *Wise v. State*, 263 So. 3d 668, 674 (¶25) (Miss. Ct. App. 2018), *cert. denied*, 263 So. 3d 665 (Miss. 2019); *Blakeney v. State*, 39 So. 3d 1001, 1008 (¶16) (Miss. Ct. App. 2010). Because Carter’s indictment included the essential elements as required by statute and precedent, this claim fails.

III. Whether the circuit court erred by failing to hold an evidentiary hearing prior to the denial of Carter’s PCR motion.

¶17. Carter argues that the circuit court erred by failing to hold an evidentiary hearing prior to the denial of his PCR motion. Carter also complains that the circuit court did not adequately address the issues presented in his motion. Carter cites no authority in support of his argument, and it is procedurally barred by Mississippi Rule of Appellate Procedure 28(a)(7). “Arguments advanced on appeal must contain the contentions of the appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on.” *Johnston v. State*, 172 So. 3d 756, 759 (¶7) (Miss. Ct. App. 2012) (internal quotation marks omitted). Notwithstanding the procedural bar, Carter’s claim is without merit.

¶18. “A trial court possesses the authority to summarily dismiss a PCR motion without an evidentiary hearing ‘if it plainly appears from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief.’” *Kennedy v. State*, 181 So. 3d 299, 301 (¶9) (Miss. Ct. App. 2015) (quoting Miss. Code Ann. § 99-39-11(2) (Rev. 2015)).

¶19. A review of Carter’s indictment, signed plea petition, and sworn colloquy provided

the circuit court with ample evidence to determine that his PCR motion lacked merit. Accordingly, we find the circuit court did not err by denying Carter's PCR motion without an evidentiary hearing.

IV. Whether Carter's counsel provided ineffective assistance.

¶20. Carter alleges his counsel's assistance was ineffective because he failed to object to the defective indictment and other errors discussed in the previous issues on appeal. Finding those issues of no merit, it necessarily follows that the present assignment of error with regard to counsel's effectiveness is also without merit.

CONCLUSION

¶21. For the foregoing reasons, we affirm the circuit court's denial of Carter's PCR motion.

¶22. **AFFIRMED.**

BARNES, C.J., CARLTON AND J. WILSON, P.JJ., GREENLEE, TINDELL, McDONALD, LAWRENCE, McCARTY AND C. WILSON, JJ., CONCUR.